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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1939.

No. 49

GEORGE W. GRIFFITHS,
(Petitioner) Appellee,

vs.

COMMISSIONER OF INTERNAL REVENUE,
(Respondent) Appellant.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

REPLY BRIEF FOR PETITIONER.

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STATEMENT.

Except for minor omissions, the Statement in respond-'s brief correctly reflects the formal findings of fact de by the United States Board of Tax Appeals. How-er, we find it necessary to correct what appear to us to unfounded statements of fact, and misconstructions of record, appearing in the Summary of Argument and the Argument, in respondent's brief:

1. In a footnote, brief page 13, counsel state that, in the instant case, "*the income had already accrued in the taxpayer's favor.*" This obviously means that, when taxpayer sold the stock in question to G. W. G. Corporation, he had already concluded a transaction with Lay in which income "had already accrued" to him. Yet, in respondent's Statement (Brief, p. 4), it appears that, when G. W. G. Corporation was organized and the stock sold to it, petitioner had merely been advised "that Lay *would probably enter into a settlement* which would take the form of a repurchase of the shares."

2. In brief, page 22, it is asserted that petitioner owed to one Harrison a debt of $14,556.08. The Court will look in vain in the Board's findings of fact for any reference to such a debt. To be sure, a payment of $14,556.08 to Harrison is mentioned in the deficiency letter, as a deduction allowed by the Commissioner from the amount received from Lay. (Rec. 7.) Furthermore, the original agreement between petitioner and G. W. G. Corporation recited that the corporation was "to assume and perform the obligations of said George W. Griffiths to pay E. H. Harrison 15% of the net amount of money (after the payment of all expenses) received on the sale of said stock to said Robert D. Lay." (Rec. 62.)

While the previous understanding between Griffiths and Harrison is entirely outside the issues and naturally does not appear in the record, it is reasonably apparent that it had to do with services Harrison was to perform in connection with the controversy with Lay. Certainly petitioner was then under no money obligation to Harrison. Relief from a nonexistent debt is not income.

3. At the end of the extended footnote, brief page 20, it is stated that petitioner made no showings as to certain matters, which as a matter of fact had been considered

outside the issues, correctly as we believe; but on one of them there does chance to be a showing.

It is said that there was no showing "that the transactions" (scheduled at Rec. 59) "constituted anything more than the investment and reinvestment of the money received from Lay."

In order to show that G. W. G. Corporation was a genuine corporation, which transacted business having no connection with the transactions here in question, petitioner had introduced in evidence a schedule showing the corporation's 1933 purchases, consisting of seven other blocks of stock, the total amount of such other purchases being $179,762.50. The schedule also shows the dates of sale of those of these blocks of securities which were subsequently disposed of. Only two of the blocks were sold in 1933, and the proceeds therefrom amounted to $31,178.00. (Rec. 59.) In the deficiency letter, the Commissioner asserts that in the sale of the cemetery stock to Lay there was realized a profit of $75,433.92, over a cost of $8,000, or a total realization of $83,433.92. (Rec. 7.) Obviously, the corporation's outlay of $179,762.50 was not a mere investment of this $83,433.92 and reinvestment of the $31,178.00 realized from 1933 sales. This would be true even if it did not affirmatively appear that G. W. G. Corporation, in that year, also paid petitioner a salary of $10,000, and dividends of $20,000, both of which he returned as income to himself (Rec. 27-29), as well as $3,368.13 as an installment of principal and as interest on the purchase price (Rec. 65).

It follows as a mathematical certainty that these transactions were "more than the investment and reinvestment of the money received from Lay."

SUMMARY OF ARGUMENT.

1. The sale to Lay was by G. W. G. Corporation and should not be treated as petitioner's individual transaction.

The first heading of respondent's brief really presents two distinct arguments: *first*, that petitioner's sale to G. W. G. Corporation did not come within the installment sale provisions of the statute, and, *second*, that this sale to G. W. G. Corporation should have been ignored, and petitioner's income computed on the theory that he himself was vendor in the sale to Lay, in which case there could be no question of installment sales.

Since the first of these mutually exclusive arguments is reiterated as point 3 of respondent's brief, we reply to it under the third point of this brief; and we confine our first point to the question whether petitioner or G. W. G. Corporation was the vendor in the sale to Lay.

2. The legal consequences of petitioner's transactions with G. W. G. Corporation, and of G. W. G. Corporation's transaction with Lay, may be determined as questions of law. However, such determination should not be predicated on assumptions of fact not supported by the record.

3. Issues outside the record:

(a) The decision of the Circuit Court of Appeals cannot be affirmed on grounds suggested for the first time in respondent's brief filed in this Court and entirely outside the record.

(b) Petitioner was entitled to reflect his sale to G. W. G. Corporation, in his tax return, as an installment transaction.

(c) Petitioner did not realize income through the discharge of a supposed debt to one Harrison.

ARGUMENT.

1. The sale to Lay was by G. W. G. Corporation and should not be treated as petitioner's individual transaction.

In petitioner's original brief, attention was called to the way in which he had returned his transaction with G. W. G. Corporation, in order that the Court might clearly understand the exact nature of the tax-saving motive which admittedly was present, and at the same time to make it clear that petitioner has been consistent in treating G. W. G. Corporation as a separate taxpayer, in that he returned, as personal income to him in the same taxable year, $34,933.13 received from that corporation. (Brief, p. 10.)

Counsel have seen fit to disregard the latter aspect of the facts, even going so far as to omit mention (in their Statement) of the Board's specific finding that the taxpayer returned $1,436.15 of interest (Rec. 65), which presumably included an interest payment of $1,243.13 by G. W. G. Corporation. However, we erred in our prediction that no one would question the correctness of petitioner's return of his sale to G. W. G. Corporation (on an instalment basis), assuming the recognition of the reality of this sale.

Respondent's first point (Brief, p. 9) begins: "The transaction" (presumably the sale to G. W. G. Corporation) "did not constitute an installment sale within the meaning of the statute." Under that point, counsel present the mutually repugnant propositions, (1) that (as a matter of income tax law) there was no "sale" to G. W. G. Corporation at all, and (2) that this "sale" to G. W. G. Corporation did not come within the scope of the Section relating to installment sales.

We confine the first portion of this brief to the first proposition; and claim that G. W. G. Corporation has been found to be a legal entity; and that it, and not petitioner, made the sale to Lay. Consequently, petitioner is not taxable individually upon the theory that the corporation's sale to Lay was his individual transaction.

Counsel open their argument with a denunciation of the "scheme" to avoid taxes or postpone them by spreading them over a period of forty years (subject to statutory acceleration in case of transfer by death or otherwise), and state that the "avoidance" would be through the removal of the individual profit from the higher brackets.

Confessedly, be the hardship small or great, a taxpayer must pay taxes computed in accordance with the Statute; *but it is "his legal right to decrease the amount of what otherwise would be his taxes by any means which the law permits."* (*Gregory* v. *Helvering*, 293 U. S. 465, 469.) Inasmuch as, before a previous tribunal, respondent and his counsel have characterized petitioner's effort to exercise this right as a "nefarious tax evasion scheme," and as calling for a fraud penalty (Rec. 67, 68), and now present the case to this Court as one of a "transparent and meaningless device" and an "attempt to stage an empty ritual," (Brief, pp. 10, 13), it may be appropriate to call the Court's attention to the fact that petitioner was faced with a hardship the effect of which he was seeking to mitigate.

In 1931 petitioner owned this stock (acquired from Lay), which had cost him $100,000 and had proved of small apparent value. He then had no knowledge of any chance to recoup this loss. Wishing to effect some tax saving, he then arranged for its sale at what apparently was its then fair value. However, a taxpayer's deductions for losses are strictly circumscribed by stat-

ute. His maximum saving was limited to 12½% of his "capital net loss." (Par. 208(c) Revenue Act of 1926.) If his bracket called for a lower rate, this percentage would be reduced; and, if his deductible loss exceeded the entire year's income, the excess loss would have no tax effect. At times, Congress has recognized the tax hardship which arises from a concentration of losses in a single year, by permitting some carry-over of the deficit. No such provision was then in effect.

Having obtained a tax benefit, thus circumscribed, petitioner learned, a year later, that he had been victimized in his original investment, and that, upon reacquiring the stock, he had a chance to force restitution and recoup the larger part of his loss.

However, if he himself succeeded in accomplishing this, by direct cash sale, he would be faced with higher bracket surtaxes, and incur taxes greatly exceeding the tax advantage which he obtained the year before. The taxpayer suffers, and the Commissioner gains, each time a single year discloses a concentration either of profit or of loss; and if respondent should prevail in this proceeding, this petitioner will have experienced both misfortunes.

That petitioner should wish, and openly seek, to spread into lower brackets what was in fact but the recoupment of a previous loss was neither "nefarious" nor "sinful." (Rec. 67). Yet from the time respondent opened the bombardment with a charge of fraud, long since abandoned as untenable, petitioner has been made a target for epithet and epigram. Counsel, before three successive tribunals, have shown the zeal of crusaders in producing new theories for exacting maximum taxes, often taking liberties with both facts and pleadings; and they consistently have ignored or belittled the corporation's substantial business activity, and petitioner's return of the income which accrued to him from its operations, in-

come which respondent, in part at least, should clearly have eliminated were he consistent in his attempted restatement of petitioner's return.

We submit, in the words of this Court in the very case upon which counsel ground their argument, that *"the question for determination is whether what was done, apart from the tax motive, was the thing which the statute intended."* (*Gregory* v. *Helvering*, 293 U. S. 465 (469). The Board's findings of fact, when supported by substantial evidence are binding on all appellate tribunals; and we therefore have the simple question whether, within the meaning of the income tax statutes, petitioner personally sold the stock to Lay. The Board has found that he did not. Counsel, in contending that he did, rely almost exclusively on the cases of *Gregory* v. *Helvering*, 293 U. S. 465, and *Minnesota Tea Company* v. *Helvering*, 302 U. S. 609.

Insofar as this question is concerned we look in vain for parallels in the issues of those cases. In the former case, the money (held to be income to the individual stockholder) had actually reached her "individual pocket" from the pocket of what counsel might term her *alter ego*. The problem was whether the money had arrived at that destination without incurring individual tax, because its transfer came under the so-called "reorganization provisions" of the Revenue Act.

The present case presents converse facts. While counsel studiously avoid admitting it, they cannot deny that the taxpayer has faithfully made returns of individual income covering all funds which he individually has received from G. W. G. Corporation. This he must continue to do; but respondent would also tax him on what he has not received.

The problem really is not whether income shall entirely escape tax, but whether there shall be duplication, and, in some degree, even triplication, of tax on certain

receipts. To the extent that they represent profit to it, they have been returned as such by the corporation. All moneys paid by the corporation to the taxpayer have been reported, and presumably must continue to be reported, by him individually; and now it is proposed to tax as an individual receipt the initial payment of the funds to the corporation.

To be sure this Court, in the case of *Gregory* v. *Helvering*, emphasized the fact that a corporation, which momentarily held certain assets, was created solely for that purpose and was immediately "put to death," and held that its activity for a day did not make it a real participant in a genuine reorganization.

Realizing that the genuineness of the controlled corporation (as a business entity and not a mere technical existence) might be of moment in the instant case, evidence was produced by petitioner, and findings have been made by the Board, which clearly differentiate this case from that feature of the facts in *Gregory* v. *Helvering*.

Aside from these circumstances, *Gregory* v. *Helvering* is merely an authority, first, as to the construction of Section 112 (the "reorganization" section of the Revenue Act), and, second, for the proposition that, in considering the genuineness of a transaction, the Court will consider what was really done, a principle for which we have consistently contended.[1]

---

[1] It is true that *Gregory* v. *Helvering* has been repeatedly cited, not only in cases having close similarity in the facts, but in cases involving somewhat different questions but in which the general principle just mentioned has seemed applicable. Counsel refer (Brief, p. 17) to page 26 of a brief in the pending case of *Higgins* v. *Smith*, as listing a considerable number of such cases. They might have cited an equally imposing list of cases in which the Commissioner has been unsuccessful in efforts to use the Gregory case as an authority for denying to taxpayers the income tax consequences of genuine transactions, primarily because tax saving motives influenced the selection of their forms. A few such cases are: *Lea* v. *Commissioner*, C. C. A. 2d Cir., 96 Fed. 2d 55 (57); *Smith* v. *Higgins*, C. C. A. 2d Cir., 102 Fed. 2d 456 (458); *Commissioner* v. *Freund*, C. C. A. 3rd Cir., 98 Fed. 2d 201 (207); *Humphreys* v. *Commissioner*, C. C. A. 2d Cir., 88 Fed. 2d 430 (432); *Chisholm* v. *Commissioner*, C. C. A. 2d Cir., 79 Fed. 2d 14 (15); *Commissioner* v. *Eldridge* C. C. A. 9th Cir., 79 Fed. 2d 629 (631); *Helvering* v. *Johnson*, C. C. A. 8th Cir., 104 Fed. 2d 141 (143).

Most of what we have said with respect to *Gregory* v. *Helvering* is equally applicable to *Minnesota Tea Company* v. *Helvering*, 302 U. S. 609. In that case the corporation, taxpayer, paid certain moneys to its stockholders one consideration for which was that they would in turn pay a specified part thereof to corporate creditors. The question was whether this component was received by the stockholders as a "distribution" by the corporation. The word "distribution" as used in the Statute obviously is equivalent to "dividend." The actual decision merely was that calling this payment a "distribution" did not make it one.

Counsel also cite *Helvering* v. *Bashford*, 302 U. S. 454, also arising under the "reorganization" section. There the Atlas Company was really purchasing three corporations through the medium of causing their assets to be transferred to a new subsidiary. In the first step of the agreed program, shares of the three corporation were turned over to Atlas; and it was argued that this made it the owner of their stock and therefore a "party" to the "reorganization." This Court referred to such "ownership" as "transitory and without real substance." That language has no application to this case, in which G. W. G. Corporation acquired the stock subject to no duty to sell or transfer it, but did sell it and did retain and use the proceeds.

Space will not permit an analysis of the applicability of all the various slogans and epigrams with which counsel seek to buttress their argument; but we might mention two:

The first is "an anticipatory attempt to deflect income for tax purposes." One may find such an "anticipatory attempt" in the selection of the form in which practically every important business transaction is completed. In

fact, various provisions which counsel would characterize as "of a relief character" have been included in revenue acts for this very purpose. Examples are: capital gain provisions and provisions permitting optional methods of returning the proceeds of corporate liquidations if carried on in certain forms. As a striking example of appropriate "anticipatory attempts," we mention the law with respect to corporate distributions in kind. Assume that the value of a corporate asset has advanced over cost, if the corporation itself sells this asset it will be taxed on its profit; and then, when the profit reaches the stockholders in a corporate distribution, they also will be taxed. However, the corporation, by "anticipatory arrangement," may make a distribution in kind without being taxed with any profit. The stockholders reflect this dividend in their individual returns at the then value of the asset received, reporting further profit or loss in case of any variation of the price at which they sell from the reported value at receipt. (See Article 22-A-21 of Regulations 101; also *General Utilities and Operating Company* v. *Helvering*, 296 U. S. 200).

The General Utilities decision is of particular interest both because of a similarity of facts to the instant case, and because, in the decision which was reversed by this Court, the Circuit Court had made full use of the catch words "anticipatory arrangements" and "conduit" (discussed below), as well as of such expressions as "transaction deliberately planned for the sole purpose of escaping taxation," "ostensibly making the sale" and "a plan, not to use the harsher terms of scheme, artifice, or conspiracy." (74 F. (2d) 972, at 976.)

In that case, as in this, a sale of certain stock had been discussed but not yet agreed upon. In that case, as in this, a transfer was made of the stock (there through a dividend in kind and here a sale to a controlled corpora-

tion) with the confessed anticipation that the transferee would proceed to sell the stock. However, this Court paid little attention to the invectives in the Circuit Court's opinion; and held that the Commissioner's claim, that the corporation realized profit in its distribution to its stockholders, was without merit. (p. 206.)

We called attention above to the word "conduit", appearing in *Gregory* v. *Helvering* and repeated on Brief p. 14. That word strikingly describes a transaction under which certain funds, in what is really a single transaction, are routed in a particular way and are claimed to have promptly arrived at a desired destination without incurring the tax consequences which would have existed had the transaction been simplified.

The expression is not applicable to this case for the two reasons: First, Here there was not one transaction but two independent transactions, with different participants, a sale to a corporation by the taxpayer, and a subsequent sale by that corporation to a third person. The subsequent sale had not been contracted for when the first sale was made; and the first sale was not conditioned upon the second being completed, although such was the expectation. Second, The proceeds, as such, will never arrive at the destination referred to. The corporation, which received these proceeds, has paid substantial amounts to its stockholder, and on these he has paid tax. His installment sale contract gave him a contract right; but it arose before the Lay transaction, and gave him merely an interest-bearing debt, taxes with respect to receipts on which he has paid and is paying.

Its 1933 transactions sufficiently establish the G. W. G. Corporation as a live, active corporation, such as the Board found it to be; *and its genuineness is a fact which must be accepted if supported, as it is, by substantial evidence.*

2. The legal consequences of petitioner's transactions with Lay, may be determined as questions of law. However, such determination should not be predicated on assumptions of fact not supported by the record.

In our original brief we emphasized the principle that issues of fact are determined by the Board, and the Board only, because the Circuit Court had clearly drawn and acted upon its own conclusions of fact. That this emphasis was timely is confirmed by the fact that, in his brief filed in this Court, respondent has again overstepped both issues and facts.

It is no reply to this point to cite cases in which this Court and Circuit Courts have determined questions of law,—as, for example, whether a specific transaction was a "reorganization" as described in the Statute.

Counsel cite no case establishing a principle of law to the effect that a sale by a controlled corporation gives rise to income to its stockholder,[2] nor can support for such a principle be found in the definition of "gross income" found in the only statute cited in the respondent's brief which could possibly directly bear on the issues in this case.

On the contrary, to paraphrase the language of Justice Holmes in *Klein* v. *Supervisors*, 282 U. S. 19:

> "a corporation is a person and its ownership is a nonconductor that makes it impossible to attribute its transactions to its stockholders." (p. 24.)

3. Issues outside the record:

(a) The decision of the Circuit Court of Appeals cannot be affirmed on grounds suggested for the first time in respondent's brief filed in this Court and entirely outside the record.

The law is settled that, in reviewing decisions of the

[2] A possible exception is found in a decision, by a divided Board, rendered after its decision in the case at bar had been reversed. See, however, pages 17 and 18, of petitioner's original brief.

United States Board of Tax Appeals, Circuit Courts must remain within the scope of the pleadings before the Board. It is equally settled that this Court reviews decisions of Circuit Courts on the basis of the issues as they were, not as they might have been.

In the first instance, issues are made up from:

(1) The deficiency letter, which must be appended to the petition.

(2) The assignments, in the petition, of errors claimed to have been committed by the Commissioner, with statements of fact supporting such assignments.

(3) The answer of the Commissioner, which must "fully and completely advise the petitioner and the Board of the nature of the defense".

(Rules 6 and 14 of the Board.)

In the instant case, the deficiency letter stated:

> "The alleged assignment of this stock to G. W. G. Corporation" (organized on the day of the sale to it, January 10, 1933) "has been ignored and the transaction treated as a sale by you for your account." (Rec. 7.)

In his petition the taxpayer assigned as errors:

> "The respondent has ignored a sale and assignment by the petitioner to G. W. G. Corporation of 5000 shares of the capital stock of Oakridge Cemetery Corporation * * *;"

also,

> "The respondent has erroneously treated a sale by G. W. G. Corporation of said 5000 shares" * * * "as a personal transaction of petitioner's and not as a sale by said corporation." (Rec. 3.)

While, in his answer filed with the Board, the Commissioner indulged in various general denials, he did make the following specific averments reflecting his version of the facts:

> "Petitioner" (taxpayer) "received information that Lay had been guilty of misrepresentation and

fraud. • • • After some controversy Lay acceded to the petitioner's demand, and paid the petitioner $100,000 by check • • • and the petitioner returned the 5000 shares to Lay."

"• • • The petitioner realized a taxable profit of $75,433.92 on the resale of the 5000 shares to Lay." (Rec. 10.)

In his petition for review by the Circuit Court of Appeals, and in his assignment of errors to that Court, respondent kept within the issues as pleaded, saying:

In the petition for review,

"For this" (5000 shares of Oakridge Cemetery) "stock a check was received from Lay in the amount of $100,000;" also, "The issues involved" (before the Board) "were (1) whether the petitioner should have reported the profit on the sale to Robert D. Lay of the 5000 shares," etc. "and (2) (an issue of fraud, as to which counsel stated that they "do not here assert any fraud").

In the assignments of error,

"The Board erred in finding that petitioner, during 1933, made a bona fide sale to G. W. G. Corporation of 5000 shares of stock of the Oakridge Cemetery Corporation."

also,

"The Board erred in failing to find that the sale of 5000 shares of Oakridge Cemetery stock to Robert D. Lay during 1933 was in fact a sale by the petitioner." (Rec. 74-75.)

It is suggested for the first time, by brief filed in this Court, that the Circuit Court's reversal of the decision of the Board of Tax Appeals may now be justified on the grounds that, even giving effect to the separate status of G. W. G. Corporation, petitioner nevertheless realized income, fully returnable and not fully returned by him in 1933, as follows:

(a) Acquisition by petitioner of a promise by

G. W. G. Corporation to pay him in installments the sum of $85,000.[3]

This item, it is claimed, should have been returned in full on the ground that petitioner was not justified in using the installment method in reporting this sale.

(b) The payment by G. W. G. Corporation of a personal debt of petitioners in the sum of $14,566.08. (Brief, pp. 22-23.)

Before discussing these two items, we call the attention of the Court to the fact that, in presenting them, counsel have gone entirely outside the pleadings. Never before has there been the slightest suggestion that petitioner realized income through the discharge of any supposed indebtedness from him to one Harrison. The record is equally devoid of any previous claim, or even suggestion, that petitioner's sale to G. W. G. Corporation was not an installment sale within the meaning of the Act.

In *General Utilities and Operating Company* v. *Helvering*, 296 U. S. 200 (already cited), this Court reversed a decision of the United States Court of Appeals for the Fourth Circuit (which, in turn, had reversed a decision of the United States Board of Tax Appeals) because the Circuit Court's reversal was on grounds not raised before the Board. The following language from this Court's decision is so specifically applicable that further comment would seem superfluous:

> "The second ground of objection, although sustained by the court, was not presented to or ruled upon by the Board. The petition for review relied wholly upon the first point; and, in the circumstances, we think the court should have considered no other. Always a taxpayer is entitled to know with fair certainty the basis of the claim against him. Stipulations concerning facts and any other evidence properly are accommodated to issues adequately raised. • • •
>
> "Here the court undertook to decide a question not

[3] In this portion of their brief, counsel disregard the deductions from this $85,000, of petitioner's cost basis and the expense incurred in the sale of the stock.

properly raised. Also it made an inference of fact directly in conflict with the stipulation of the parties and the findings, for which we think the record affords no support whatever." (pp. 206, 207.)

(b) Petitioner was entitled to reflect his sale to G. W. G. Corporation, in his tax return, as an installment transaction.

Counsel cite a textbook, and two decisions for the proposition that the installment sale provisions must be strictly construed against the taxpayer. (Brief, pp. 10, 11.) The second decision is by this Court (*Helvering* v. *Inter-Mountain Insurance Co.*, 294 U. S. 686) where the Court said, referring to statutory provisions permitting deductions in determining "the net amount to be taxed":

> "The rule that ambiguities in statutes imposing taxes are to be resolved in favor of taxpayers does not apply. Deductions are allowed only when plainly authorized." (689)

Assuming counsel's claim that the same rule of strict construction applies to "relief provisions" as is applied to "deductions," the conclusion would be that, if deductions for losses in sales to controlled corporations are allowable, the application of the installment sale provisions to transactions with controlled corporations would also be allowed. There is no more ambiguity in the statute's provision in one case than in the other.

As authority for the allowance of such deductions, see *Jones* v. *Helvering*, 71 F. (2d) 214 (C. of A. of D. C., certiorari denied 293 U. S. 583); also the decisions of this Court cited at page 217 of that case.

(c) Petitioner did not realize income through the discharge of a supposed debt to one Harrison.

The fact is that the respondent's treatment of the Harrison item was not questioned, and that it was not so much as mentioned in the issues made up by the pleadings.

Naturally the record contains little information regarding it.

However, it must be clear that, before petitioner's sale to G. W. G. Corporation, petitioner was not indebted to Harrison in the amount of $14,566.08 or in any amount. He was under no obligation to even sell any stock to Lay; and, if he did not, he would owe Harrison nothing. It may be that petitioner was under at least a moral obligation to Harrison not to sell the stock to another, who in turn might seek to sell to Lay,—unless the other would assume a similar obligation to Harrison; but the satisfaction of such a contingent obligation, be it moral or legal, could not constitute income.

We again respectfully ask that the decision of the Circuit Court of Appeals be reversed.

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